

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

ELIJAH LEE MILLER,  
Petitioner,  
v.  
STATE OF CALIFORNIA, et al.,  
Respondents.

Case No. 5:23-cv-00020-JVS-MAA

**ORDER DISMISSING PETITION  
AND DISMISSING ACTION  
WITHOUT PREJUDICE**

## I. INTRODUCTION AND BACKGROUND

On December 28, 2022, Petitioner Elijah Lee Miller filed a *pro se* petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 in the United States District Court for the Southern District of California (“Petition”). (Pet., ECF No. 1.) The Petition alleges four grounds for federal habeas relief: (1) “false imprisonment, false conviction, false sentencing, unlawful [detention]”; (2) the District Attorney and Judge “wanted to get [Petitioner’s] case over with”<sup>1</sup>; (3) same allegation as

<sup>1</sup> As supporting facts for Ground Two, the Petition states that Petitioner was informed prior to the date of conviction and sentencing that Josef Daniel Miller was “in trouble . . . [for] threats or assault” and that the Judge and District Attorney manipulated Petitioner into signing a document related to the attempted murder charge. (Pet. 7–8.)

1 contained in Ground Two, plus Petitioner requests immediate release from custody;  
 2 (4) same allegation as contained in Ground Three, plus Petitioner requests  
 3 immediate release from custody, \$20,000,000.00 in damages, and expungement of  
 4 Petitioner's criminal record. (*Id.* at 6–9.)<sup>2</sup>

5 On January 3, 2023, the Southern District of California transferred the  
 6 Petition to this Court. (ECF No. 3.) On January 27, 2023, the Court issued an  
 7 Order re: Filing of Petition, screening the Petition and ordering Petitioner to show  
 8 cause why the Petition should not be dismissed for lack of personal jurisdiction or  
 9 failure to verify the Petition under penalty of perjury. (ECF No. 8.) In addition, in  
 10 light of the uncertainty as to whether Petitioner had presented the claims raised in  
 11 the Petition to the California Supreme Court, the Order also reminded Petitioner of  
 12 the requirement to exhaust claims in state court before proceeding with seeking  
 13 federal habeas relief. (*Id.* at 3–4.)

14 On February 13, 2023, the Court issued an Order addressing three filings  
 15 from Petitioner received on January 30 and February 6, 2023 (ECF Nos. 9, 11, 13),  
 16 and reminding Petitioner that the response to the Order re: Filing of Petition was  
 17 due no later than February 27, 2023. (ECF No. 14, at 2.) On March 24, 2023,  
 18 Petitioner filed a document entitled “Letter” requesting to know whether there was  
 19 anything Petitioner needed to do regarding this case. (ECF No. 15, at 2.) On  
 20 March 30, 2023, the Court issued an Order addressing the Letter and extending the  
 21 deadline to respond to the Order re: Filing of Petition to no later than thirty (30)  
 22 days after the date the Order was issued, or to April 29, 2023. (ECF No. 16.) In the  
 23 absence of a response from Petitioner, on May 19, 2023, the Court issued an Order  
 24 to Show Cause re: Dismissal for Lack of Prosecution, ordering Petitioner to show  
 25 cause by June 19, 2023 why the Court should not recommend that the case be  
 26 dismissed for lack of prosecution and failure to comply with court orders (“OSC”).

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27 <sup>2</sup> Pinpoint citations in this Order refer to the page numbers appearing in the ECF-  
 28 generated headers of the cited documents.

1 (ECF No. 17.) On June 5, 2023, Petitioner filed a letter requesting to know the  
 2 status of the action and the next “phase [in the] process.” (ECF No. 18.) On July 6,  
 3 2023, the Court issued an order discharging the OSC and granting one final  
 4 extension of time to file a response to the Order re: Filing of Petition (“July 6  
 5 Order”). (ECF No. 19.) In the July 6 Order, the Court granted Petitioner an  
 6 additional thirty (30) days to file a response to the Order re: Filing of Petition, or to  
 7 August 7, 2023, and expressly cautioned Petitioner that **“a lack of response to this  
 8 Order may result in a recommendation that the action be dismissed for failure  
 9 to prosecute and failure to comply with court orders”** (“July 6 Order”). (*Id.* at  
 10 2.)

11 To date, Petitioner has failed to respond to either the Order re: Filing of  
 12 Petition or the July 6 Order. Indeed, Petitioner has not communicated with the  
 13 Court since June 5, 2023.

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15 **II. LEGAL STANDARD**

16 District courts may dismiss cases *sua sponte* for failure to prosecute or for  
 17 failure to comply with a court order under Rule 41(b). *Hells Canyon Pres. Council*  
 18 *v. U.S. Forest Serv.*, 403 F.3d 683, 689 (9th Cir. 2005); *see also Link v. Wabash*  
 19 *R.R. Co.*, 370 U.S. 626, 629–30 (1962) (holding that the court has “inherent power”  
 20 to dismiss cases *sua sponte* for lack of prosecution). Unless the Court states  
 21 otherwise, a dismissal under Rule 41(b) operates as an adjudication on the merits.  
 22 Fed. R. Civ. P. 41(b). “Dismissal is a harsh penalty and is to be imposed only in  
 23 extreme circumstances.” *In re: Phenylpropanolamine (PPA) Prods. Liab. Litig.*,  
 24 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting *Malone v. USPS*, 833 F.2d 128, 130  
 25 (9th Cir. 1987)).

26 “A Rule 41(b) dismissal ‘must be supported by a showing of unreasonable  
 27 delay.’” *Omstead v. Dell*, 594 F.3d 1081, 1084 (9th Cir. 2010) (quoting *Henderson*  
 28 *v. Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986)). In addition, the court must weigh

1 the following factors in determining whether a Rule 41(b) dismissal is warranted:  
 2 “(1) the public’s interest in expeditious resolution of litigation; (2) the court’s need  
 3 to manage its docket; (3) the risk of prejudice to the defendants/respondents; (4) the  
 4 availability of less drastic alternatives; and (5) the public policy favoring disposition  
 5 of cases on their merits.” *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002).  
 6 The Ninth Circuit will “affirm a dismissal where at least four factors support  
 7 dismissal, or where at least three factors strongly support dismissal.” *Dreith v. Nu*  
 8 *Image, Inc.*, 648 F.3d 779, 788 (9th Cir. 2011) (quoting *Yourish v. Cal. Amplifier*,  
 9 191 F.3d 983, 990 (9th Cir. 1999)). Finally, “in order to warrant a sanction of  
 10 dismissal, the party’s violations of the court’s orders must be due to wilfulness or  
 11 bad faith.” *Id.*

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### 13 III. ANALYSIS

#### 14 A. The Public’s Interest in Expeditious Resolution and the Court’s 15 Need to Manage Its Docket

16 The first and second factors (the public’s interest in expeditious resolution of  
 17 litigation and the Court’s need to manage its docket)<sup>3</sup> weigh in favor of dismissal.  
 18 “Orderly and expeditious resolution of disputes is of great importance to the rule of  
 19 law.” *In re: Phenylpropanolamine*, 460 F.3d at 1227. “The public’s interest in  
 20 expeditious resolution of litigation always favors dismissal.” *Pagtalunan*, 291 F.3d  
 21 at 642 (quoting *Yourish*, 191 F.3d at 990). In addition, district courts “have an  
 22 inherent power to control their dockets,” *In re: Phenylpropanolamine*, 460 F.3d at  
 23 1227 (quoting *Thompson v. Hous. Auth. of Los Angeles*, 782 F.2d 829, 831 (9th Cir.  
 24 1986)), and “are best suited to determine when delay in a particular case interferes  
 25 with docket management and the public interest.” *Yourish*, 191 F.3d at 990  
 26 (quoting *Ash v. Cvetkov*, 739 F.2d 493, 496 (9th Cir. 1984)).

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28 <sup>3</sup> The first two factors are usually reviewed together “to determine if there is an  
 unreasonable delay.” *In re Eisen*, 31 F.3d 1447, 1452 (9th Cir. 1994).

1 Petitioner has not filed any response to the Order re: Filing of Petition or July  
 2 6 Order, and has not otherwise participated in this lawsuit since June 5, 2023. The  
 3 Court concludes that Petitioner's inaction and lack of communication with the  
 4 Court constitutes willful unreasonable delay. *See, e.g., Thomas v. Maricopa Cnty.*  
 5 *Jail*, 265 F. App'x. 606, 607 (9th Cir. 2008) (holding that district court did not  
 6 abuse its discretion by dismissing *pro se* prisoner lawsuit for failure to respond to a  
 7 court order for almost three months). Petitioner's noncompliance also interferes  
 8 with the public's interest in the expeditious resolution of this litigation and hinders  
 9 the Court's ability to manage its docket. *See In re: Phenylpropanolamine*, 460 F.3d  
 10 at 1227 ("[The Ninth Circuit] defer[s] to the district court's judgment about when a  
 11 delay becomes unreasonable 'because it is in the best position to determine what  
 12 period of delay can be endured before its docket becomes unmanageable.'")  
 13 (quoting *In re Eisen*, 31 F.3d at 1451)). The first and second factors favor  
 14 dismissal.

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#### 16       **B. Risk of Prejudice to Respondents**

17       The third factor (risk of prejudice to the respondents) also weighs in favor of  
 18 dismissal. "A [respondent] suffers prejudice if the [petitioner's] actions impair the  
 19 [respondent's] ability to go to trial or threaten to interfere with the rightful decision  
 20 of the case." *In re: Phenylpropanolamine*, 460 F.3d at 1227 (quoting *Adriana Int'l*  
 21 *Corp. v. Thoeren*, 913 F.2d 1406, 1412 (9th Cir. 1990)). "The law also presumes  
 22 prejudice from unreasonable delay." *Id.* (citing *In re Eisen*, 31 F.3d at 1453). The  
 23 risk of prejudice to a respondent is related to a petitioner's reason for failure to  
 24 prosecute an action. *Pagtalunan*, 291 F.3d at 642. "Whether prejudice is sufficient  
 25 to support an order of dismissal is in part judged with reference to the strength of  
 26 the [petitioner's] excuse for the default." *Malone*, 833 F.2d at 131.

27       Here, Petitioner has failed to comply with the Order re: Filing of Petition and  
 28 July 6 Order. Indeed, Petitioner has not communicated with the Court since June 5,

1 2023. As “a presumption of prejudice arises from the [petitioner’s] unexplained  
2 failure to prosecute,” the third factor favors dismissal. *See Hernandez v. City of El*  
3 *Monte*, 138 F.3d 393, 400 (9th Cir. 1998).

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5 **C. Availability of Less Drastic Alternatives**

6 The fourth factor (the availability of less drastic alternatives) also supports  
7 dismissal. “The district court need not exhaust every sanction short of dismissal  
8 before finally dismissing a case, but must explore possible and meaningful  
9 alternatives.” *Henderson*, 779 F.2d at 1424.

10 The Court considered and implemented less drastic alternatives prior to  
11 dismissal. The Court expressly warned Petitioner that failure to comply with the  
12 July 6 Order would result in a recommendation that the Petition be summarily  
13 dismissed without prejudice for failure to prosecute and failure to comply with  
14 court orders. (July 6 Order 2.) *See In re: Phenylpropanolamine*, 460 F.3d at 1229  
15 (“Warning that failure to obey a court order will result in dismissal can itself meet  
16 the ‘consideration of alternatives’ requirement.”). The fourth factor weighs in favor  
17 of dismissal.

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19 **D. Public Policy Favoring Disposition on the Merits**

20 As to the fifth factor, “[p]ublic policy favors disposition of cases on the  
21 merits.” *Pagtalunan*, 291 F.3d at 643. However, “a case that is stalled or  
22 unreasonably delayed by a party’s failure to comply with deadlines . . . cannot move  
23 toward resolution on the merits.” *In re: Phenylpropanolamine*, 460 F.3d at 1228.  
24 Thus, “this factor lends little support to a party whose responsibility it is to move a  
25 case towards disposition on the merits but whose conduct impedes progress in that  
26 direction.” *Id.* (internal quotation marks omitted). The case has been stalled by  
27 Petitioner’s failure to respond to the Order re: Filing of Petition and July 6 Order.  
28 Still, the public policy favoring the resolution of disputes on the merits is strong

1 and, under the circumstances, outweighs Petitioner's noncompliance and inaction.  
2

3 **E. Dismissal Without Prejudice**

4 In summary, Petitioner's failure to comply with the Order re: Filing of  
5 Petition or July 6 Order, and failure to otherwise participate in this lawsuit since  
6 June 5, 2023 constitutes willful unreasonable delay. Four of the Rule 41(b)  
7 dismissal factors weigh in favor of dismissal, whereas only one factor weighs  
8 against dismissal. "While the public policy favoring disposition of cases on their  
9 merits weighs against [dismissal], that single factor is not enough to preclude  
10 imposition of this sanction when the other four factors weigh in its favor." *Rio*  
11 *Props., Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1022 (9th Cir. 2002). The Court  
12 concludes that dismissal of this action for failure to prosecute and for failure to  
13 comply with Court orders is warranted, but, consistent with Rule 41(b) and this  
14 Court's exercise of its discretion, the dismissal is without prejudice.

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16 **IV. CONCLUSION**

17 IT THEREFORE IS ORDERED that this Petition is DISMISSED without  
18 prejudice. No further filings shall be accepted under this case number.  
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20 **V. CERTIFICATE OF APPEALABILITY**

21 Pursuant to Rule 11(a) of the Rules Governing Section 2254 Cases in the  
22 United States District Courts, the Court "must issue or deny a certificate of  
23 appealability when it enters a final order adverse to the applicant." The Court has  
24 considered whether a certificate of appealability is warranted. *See* 28 U.S.C.

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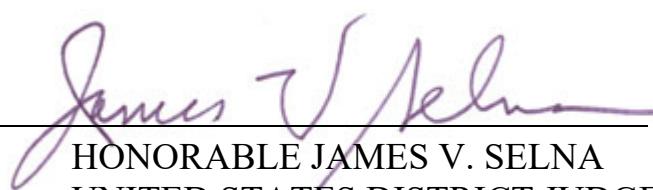
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1       § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 484–85 (2000). The Court  
2 concludes that a certificate of appealability is not warranted; thus, a certificate of  
3 appealability is **DENIED**.

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5 DATED: September 20, 2023

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7   
HONORABLE JAMES V. SELNA  
8 UNITED STATES DISTRICT JUDGE

9 Presented by:

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11 HONORABLE MARIA A. AUDERO  
12 UNITED STATES MAGISTRATE JUDGE

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